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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43155
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2014-10162
)	
MIRINDA A. BISSONETTE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Bissonette failed to establish that the district court abused its discretion by revoking probation?

Bissonette Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Bissonette pled guilty to possession of methamphetamine and, on December 22, 2014, the district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed her on supervised probation for four years with the condition that she successfully complete Family Treatment Court. (R., pp.110-19.)

Approximately one month later, Bissonette's probation officer filed a report of violation alleging that Bissonette had violated the conditions of her probation by testing positive for methamphetamine on two separate occasions, failing to report for scheduled drug testing on two separate occasions, missing her appointments with her Family Treatment Recovery Coach on two separate occasions, failing to appear for her Family Treatment Court group, failing to appear for her MRT group, and failing to report for jail time as ordered. (R., pp.124-26.) Bissonette admitted that she had violated the conditions of her probation by testing positive for methamphetamine on two separate occasions, failing to report for scheduled drug testing on two separate occasions, failing to appear for her Family Treatment Court group, failing to appear for her MRT group, and failing to report for jail time as ordered. (R., pp.133-35.) On February 23, 2015, the district court continued Bissonette on supervised probation for four years. (R., pp.137-40.)

One week later, Bissonette's probation officer filed a second report of violation, alleging that Bissonette had violated the conditions of her probation by refusing to submit to drug testing at Family Treatment Court, testing positive for methamphetamine at the probation office, and committing the new crime of petit theft. (R., pp.144-46.) Bissonette admitted the allegations and the district court revoked her probation, ordered the underlying sentence executed, and retained jurisdiction. (R., pp.148, 150-58.) Bissonette filed a notice of appeal timely from the district court's order revoking probation. (R., pp.163-66.)

Bissonette asserts that the district court abused its discretion by revoking her probation in light of her family, substance abuse, mental health issues, and because her

probation violations “were not violent in nature.” (Appellant’s brief, pp.4-6.) Bissonette has failed to establish an abuse of discretion.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider “whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

At the disposition hearing for Bissonette’s second probation violation, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for revoking Bissonette’s probation. (3/9/15 Tr., p.10, L.7 – p.12, L.14.) The state submits that Bissonette has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the March 9, 2015 disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Bissonette's probation.

DATED this 8th day of October, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of October, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 losing control. And it was based on the fact that she</p> <p>2 was minimizing. But yet in family treatment court, all</p> <p>3 of the reports that the judge had got from her</p> <p>4 counselors stated that she was being open in all of her</p> <p>5 groups about everything. So I don't know where they got</p> <p>6 that she was minimizing that or where they decided that</p> <p>7 it was up to them to contact CPS and let them know that</p> <p>8 she was minimizing.</p> <p>9 All the problems that we have had since were based</p> <p>10 on that time. Because they contacted her mother, too.</p> <p>11 And she never signed a release for that. And her mother</p> <p>12 tore her down. And, you know, all that stuff -- all</p> <p>13 that stuff should never have happened. She was doing</p> <p>14 very good in her sobriety up until that point. And I</p> <p>15 think that that needs to be looked at also and weighed</p> <p>16 before any sentencing is done.</p> <p>17 And the fact that we need -- we need help for</p> <p>18 our -- the issues that we have or none of this treatment</p> <p>19 is going to work out. Because the substance abuse isn't</p> <p>20 the issue; it's the result. Those underlying issues</p> <p>21 have to be dealt with. If they're not, it's going to be</p> <p>22 a continual thing.</p> <p>23 THE COURT: All right. Well, thank you, sir.</p> <p>24 MR. BISSETTE: Thanks.</p> <p>25 THE COURT: I appreciate it very much.</p> <p>9</p>	<p>1 All right. Any legal reason why we shouldn't</p> <p>2 proceed to final disposition, Mr. Souza?</p> <p>3 MR. SOUZA: No, sir.</p> <p>4 THE COURT: Ms. Bissonette, any legal reason why I</p> <p>5 shouldn't proceed?</p> <p>6 THE DEFENDANT: No.</p> <p>7 THE COURT: Ma'am, remember you have 42 days in</p> <p>8 which to appeal any decision the Court makes here. Of</p> <p>9 course, I put you on probation in December, as</p> <p>10 Mr. Johnson indicated, on that possession of</p> <p>11 methamphetamine and we were here in January on a</p> <p>12 probation violation that you admitted to. And I gave</p> <p>13 you a chance to continue to stay in family treatment</p> <p>14 court and receive the treatment in the community, and</p> <p>15 now we're back here on a second probation violation</p> <p>16 pretty quickly after I dispositioned the other one,</p> <p>17 about a month later.</p> <p>18 So here we are with that. And I have to look at the</p> <p>19 idea of: Is probation accomplishing the goal of</p> <p>20 protection of society and rehabilitation? Of course,</p> <p>21 your husband thinks that probation is holding you back</p> <p>22 with regard to you being able to accomplish the goals</p> <p>23 that you need to, but ultimately the choices are yours</p> <p>24 to make with regard to --</p> <p>25 THE DEFENDANT: Yeah.</p> <p>10</p>
<p>1 THE COURT: -- how you do on probation and what</p> <p>2 you're going to do. And when you continue to go back to</p> <p>3 the idea of using controlled substances and not</p> <p>4 producing tests, drug tests, and then getting charged</p> <p>5 with a new crime, it sends a clear message to me that</p> <p>6 you're not really wanting to follow the terms and</p> <p>7 conditions of probation. And now we're stuck with what</p> <p>8 do we do here now?</p> <p>9 I don't think that the goals right now are being</p> <p>10 accomplished that I wanted with regard to</p> <p>11 rehabilitation, and I think it's important that I give</p> <p>12 you that opportunity to do that. I thought I could by a</p> <p>13 second chance on probation through family treatment</p> <p>14 court, which I thought was going to provide you with the</p> <p>15 incentive and the needed treatment that you require.</p> <p>16 Right now, I don't think that's what you need. There's</p> <p>17 something more there than what family treatment court</p> <p>18 can do.</p> <p>19 So, ma'am, what I'm going to do in this case, I'm</p> <p>20 going to revoke your probation. I'm going to impose</p> <p>21 that sentence of two years fixed, three years</p> <p>22 indeterminate. I will retain jurisdiction for up to</p> <p>23 365 days. I'll make the recommendation that you</p> <p>24 participate in the CAPP rider, the 90-day program, so</p> <p>25 that you can address some of those issues that your</p> <p>11</p>	<p>1 husband talks about with regard to -- it's not just</p> <p>2 going to be drugs and dealing with the drugs. There are</p> <p>3 bigger issues for you. And the CAPP rider will help you</p> <p>4 get that start. Okay?</p> <p>5 Take it seriously while you're up there. I'd hate</p> <p>6 to have you have a bad experience where you don't really</p> <p>7 move forward and you get a recommendation that I</p> <p>8 relinquish jurisdiction and impose that sentence. Okay?</p> <p>9 So remember you have 42 days in which to appeal the</p> <p>10 decision of the Court. And I'm going to remand you back</p> <p>11 to the custody of the sheriff in lieu of that sentence.</p> <p>12 And I hope that you do really well up there and take it</p> <p>13 very seriously so that you can come back here and I can</p> <p>14 put you back on probation. Okay?</p> <p>15 Anything else, Mr. Souza?</p> <p>16 MR. SOUZA: Just a minute, Judge, if I could.</p> <p>17 THE COURT: Sure.</p> <p>18 (Counsel confers with Defendant.)</p> <p>19 MR. SOUZA: Thank you, Judge.</p> <p>20 THE COURT: We're good?</p> <p>21 Okay. Good luck to you, ma'am. Okay?</p> <p>22 THE DEFENDANT: Okay. Thank you.</p> <p>23 THE COURT: All right.</p> <p>24 (Proceedings adjourned at 9:20 a.m.)</p> <p>25</p> <p>12</p>